IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13668 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

NARSHI TRIKAMBHAI RATHOD

Appearance:

1. Special Civil Application No. 13668 of 1993

MR PRANAV G DESAI for Petitioner No. 1

NOTICE SERVED for Petitioner No. 1

MR AM MEHTA for Respondent No. 1-2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 26/04/2002

ORAL JUDGEMENT

#. Heard Mr.Pranav G. Desai, learned advocate appearing on behalf of the petitioner Corporation and Mr.A.M.Mehta, learned advocate for respondent workman.

#. The petitioner Corporation has challenged the award passed by the Labour Court, Jamnagar in Reference No.175 / 1984 [New No.120 / 1990] dated 26th July, 1993, wherein the labour court has granted reinstatement with continuity of service with 20 % backwages of the interim period.

#. This Court has issued RULE and interim relief has been granted on condition that the petitioner Corporation will go on paying every month salary last paid to the respondent workman regularly without prejudice. The respondent was also directed to file affidavit within period of 15 days from the date of receiving notice of this Court disclosing that he is not in gainful employment anywhere by order dated 19th August, 1994. In pursuance of the direction issued by this Court, the respondent workman has filed affidavit on 25th September, 1994, wherein it is stated that he is not gainfully employed anywhere. Learned advocate Mr.Desai appearing on behalf of the petitioner Corporation has submitted that once misconduct is found to be proved and the labour court is exercising the powers under Section 11-A of the Industrial Disputes Act, 1947, then while modifying the punishment, the labour court should have imposed some punishment to the workman concerned. The labour court has not imposed any punishment, therefore, the labour court has committed gross error in exercising the powers under Section 11-A of the I.D.Act, 1947. Learned advocate Mr.Desai has also submitted that in local bus, road booking was not allowed. This fact was admitted by the respondent workman in inquiry. He also further submitted that the labour court has not believed the defence of the respondent workman and finding which has been given by the competent authority is not vitiated by the labour court and therefore, in such situation, when the misconduct is proved, no interference is required by the labour court. Therefore, the labour court has committed gross error in modifying the punishment granting reinstatement with 20 % backwages of the interim period.

#. I have considered submissions made by learned advocate Mr.Desai. The allegations against the respondent workman was that at the time of checking, he had not recovered fare and not issued the tickets to one group of passengers and some fare was recovered from the passengers who were found without tickets. Before the labour court, the Corporation has not produced the past record of the respondent workman. Therefore, there was nothing on record about past misconduct. According to the defence of the respondent workman that within short

distance of two and half kilometer, bus was checked and hardly few minutes would take to reach distance of two kilometer. Though, this defence of the respondent workman was not believed by the labour court. Ultimately, the labour court has come to the conclusion that finding recorded by the competent authority is not vitiated and misconduct is also proved against the respondent workman. Thereafter, in para-10 of the award, the labour court has given cogent reasons for excising the powers under Section 11-A of the I.D.Act, 1947. The labour court has considered that looking to the proved misconduct, the workman had not issued the tickets nor had collected the fare from some passengers. The passengers were fined. The workman had preferred two departmental appeals but of no avail. The second appeal was dismissed on 17th July, 1982. Eleven years have already been passed and the workman hade long battle with the Corporation. Therefore, looking to all these circumstances, the labour court has granted reinstatement to the workman to his original post with continuity of service. But the labour court has come to the conclusion that in such circumstances, full backwages cannot be granted and when misconduct was of trivial nature and considering the fact that after filing reply by the petitioner Corporation, documentary evidence on record on 24th January, 1985, no progress was made till 4th August, 1989, advocates for parties took four years that their arguments be treated as heard and the fact that the workman need of employment as well as considering the petitioner Corporation is public body, need be bothered to bear unnecessary financial burden, awarded 20 % backwages of the interim period in favour of the respondent workman.

#. Learned advocate Mr.Desai has submitted that the labour court has not imposed any punishment for proved misconduct and modified the punishment without imposing any punishment on the respondent workman. The contention raised by the learned advocate Mr.Desai that the labour court should have imposed some punishment in case when the misconduct is proved. According to my opinion, denial of 80 % backwages amounts to punishment to the respondent workman. This aspect has been examined by this Apex Court in case of JITENDRA SINGH V. SHRI BAIDYANATH AYURVED BHAWAN LTD. reported in AIR 1984 SC 976. The relevant observations made in para-3 & 4 are relevant with the facts of this case and therefore, same are reproduced as under :-

"3. Wide discretion is vested in the Tribunal under this provision and in a given case on the

facts established the Tribunal can vacate the order of dismissal or discharge and give suitable directions. It is a well settled principle of law that when an order of termination of service is found to be bad and reinstatement is directed, the wronged workman is ordinarily entitled to full backwages unless for any particular reasons the whole or a part of it is asked to be withheld. The Tribunal while directing reinstatement and keeping the delinquency in view could withhold payment of a part or the whole of the back wages. In our opinion, the High Court was right in taking the view that when payment of back wages either in full or part is withheld it amounts to a penalty. Withholding of back wages to the extent of half in the facts of the case was, therefore, by way of penalty referable to proved misconduct and that situation could not have been answered by the High Court by saying that the relief of reinstatement was being granted on terms of withholding of half of the back wages and, therefore, did not constitute penalty.

4. Under S.11A of the Act, advisedly wide discretion has been vested in the Tribunal in the matter of awarding relief according to the circumstances of the case. The High Court under Article 227 of the Constitution does not enjoy such power though as a superior court, it is vested with the right of superintendence. The High Court is undisputedly entitled to scrutinise the orders of the subordinate tribunals within the well accepted limitations, and therefore, it could in an appropriate case, quash the award of the Tribunal and thereupon remit the matter to it for fresh disposal in accordance with law and directions, if any. The High Court is not entitled to exercise the powers of the Tribunal and substitute an award in place of the one made by the Tribunal as in the case of an appeal where it lies to it. In this case, the Tribunal had directed reinstatement, the High Court vacated the direction of reinstatement and computed compensation of Rupees 15,000/- in lieu of restoration of service. We are not impressed by the reasoning of the High Court that reinstatement was not justified when the tribunal in exercise of its wide discretion given under the law found that such relief would meet the ends of justice. The Tribunal had not recorded a

> finding that there was loss of confidence of the employer. The job of a librarian does not involve the necessity of enjoyment of any special confidence of the employer. At any rate, the High Court too did not record a finding to that effect. Again, there is no indication in the judgment of the High Court as to how many years of service the appellant had put in any how many years of service were still left under the Standing Orders. The salary and other service benefits which the appellant was receiving also did not enter into the consideration of the High Court while computing the compensation. We are, therefore, of the view that the High Court had no justification to interfere with the direction regarding reinstatement to service and in proceeding to substitute the direction by quantifying compensation of Rupees 15,000/- it acted without any legitimate basis."

#. Therefore, considering the observations made by the Apex Court while exercising the powers under Section 11-A of the I.D. Act, if the labour court denies backwages looking to the gravity of misconduct, then it can be said to be penalty imposed by the labour court. Therefore, in the facts of the present case, looking to the submissions made by learned advocate Mr.Desai that no punishment is imposed by the labour court, is not correct because denial of 80 % backwages of the interim period for about 11 years is sufficient punishment on workman. Moreover, this is not the case of dishonesty or misappropriation committed by the respondent workman. At the most it is case against the workman for committing negligence inasmuch as when the bus was checked within short distance which is not disputed by the parties and at the time of checking, it was found that workman was doing road booking. This fact was also disclosed by the respondent workman to the checking inspector. In local route, to make road booking was not permitted as per the Rules and this act of the workman, can be said to be in violation of Rules but for such misconduct, punishment of dismissal is in fact harsh and unjustified and therefore, at the most, considering this negligence of doing road booking on the part of the respondent workman, punishment of denial of 80 % backwages of 11 years can be said to be sufficient punishment on the respondent workman. Therefore, the labour court has rightly exercised the powers under Section 11-A of the I.D.Act while granting reinstatement with continuity of service. In view of above observations, the labour court has not committed any error while passing such award. As such, there is no

jurisdictional error committed by the labour court and no procedural irregularity seems to have committed by the labour court and hence, no interference of this Court is called for under Article 226 and 227 of the Constitution. Therefore, there is no substance in the present petition, which requires to be dismissed and the same is dismissed accordingly.

#. This matter is of the year 1993 involving dismissal of the year 1982. By way of interim order passed by this Court, the respondent has not been reinstated in service but ordered the petitioner Corporation to pay the workman the last drawn salary. However, it is not made clear that whether same has been paid or not. Considering all these facts and circumstances of the case, according to my opinion, some directions requires to be issued on the petitioner Corporation for implementation of the award in question. Therefore, it is directed to the petitioner Corporation to reinstate the respondent workman, if so far not reinstated by now, within period of one month from the date of receiving a copy of this order. It is also directed to the petitioner Corporation to pay 20 % backwages to the respondent workman within period of two months from the date of receiving the copy of this order. It is further directed to the petitioner Corporation to pay full wages to the respondent workman with effect from 26th July, 1993 after adjusting the wages if paid under Section 17-B of the Act, till the date of actual reinstatement in service, within period of three months from the date of receiving the copy of this order.

Rule is discharged. No order as to costs.
Direct Service is permitted to respondent.

Date : 26-4-2002 [H.K.Rathod, J.]

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